

HOUSE BILL REPORT

HB 2524

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to prohibited practices of collection agencies.

Brief Description: Concerning prohibited practices of collection agencies.

Sponsors: Representatives O'Brien and Angel.

Brief History:

Committee Activity:

Commerce & Labor: 1/29/10, 2/2/10 [DPS].

<p>Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Modifies provisions related to collection agency communication with debtors.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

Staff: Rebecca Jones (786-5793) and Joan Elgee (786-7106).

Background:

Collection agencies are regulated by both state and federal law. The federal Fair Debt Collection Practices Act (FDCPA) permits and prohibits certain practices. The state collection agencies law also regulates and prohibits certain practices. Where there is an inconsistency with state law, the FDCPA supersedes state law, unless there is an exemption for the class of debt collection practices at issue. Washington's collection agencies law is not exempt from the FDCPA; however, a state law is not inconsistent with the FDCPA if it affords greater consumer protection than the FDCPA.

Federal Law.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the FDCPA, "communication" is defined as the conveying of information regarding a debt directly or indirectly to any person through any medium. A collection agency may not communicate with a debtor at a time or place that is inconvenient and the collection agency is to assume that the convenient time for communicating is between 8:00 a.m. and 9:00 p.m. Communicating with the debtor at the debtor's place of business is prohibited if the collection agency knows or has reason to know that the debtor's employer does not allow the debtor to engage in such communication at work.

State Law.

When a collection agency sends the first notice to a debtor or if the collection agency is attempting to collect a different amount than indicated in the first notice, the notice must contain an itemization of the claim asserted including:

- the amount owing on the original obligation; and
- any interest, service charge, collection costs, late payment charges, or other charge or fee added to the original obligation.

A collection agency may inform a credit reporting bureau of the existence of a claim, but if the debtor disputes the claim by written notice, the collection agency must forward a copy of the dispute notice to the credit reporting bureau.

A collection agency may not threaten a debtor with impairment of the debtor's credit rating if a claim is not paid. Collection agencies are prohibited from communicating with a debtor in such a way as to harass, intimidate, threaten, or embarrass a debtor. Harassment is presumed if the collection agency:

- contacts a debtor or spouse in any form, manner, or place, more than three times in a single week;
- contacts a debtor at the debtor's place of employment more than one time in a single week; or
- contacts the debtor or spouse at the debtor's place of residence between 9:00 p.m. and 7:30 a.m.

Summary of Substitute Bill:

Changes are made to the prohibited practices of collection agencies by modifying provisions related to collection agency communication with debtors.

When a collection agency gives or sends a subsequent notice to a debtor and is attempting to collect a different amount than indicated in the first notice to the debtor, the collection agency is not required to itemize the different amount if the difference concerns a judgment against a debtor. Post-judgment interest, however, must be itemized if it is claimed.

If the collection agency informed a credit reporting bureau of the existence of a claim and the debtor disputes the claim, the collection agency must notify the credit reporting bureau of the dispute, rather than forwarding a written copy of the dispute to the bureau.

The prohibition on threatening a debtor with impairment of the debtor's credit rating is limited to those situations where the threats are deceptive.

A collection agency's response to a communication from a debtor does not count against the number of allowed communications in a week.

A collection agency's call to a telephone is presumed to be received in the time zone to which the area code of the number called is assigned for landline numbers, unless the collection agency has a reasonable belief that the telephone is located elsewhere. If the area code is not assigned to landline telephone numbers, the collection agency may presume that the call is received in the time zone of the debtor's last known residence, unless the collection agency has a reasonable belief that the telephone is located elsewhere.

Substitute Bill Compared to Original Bill:

Provisions related to calling a debtor's cellular phone are removed. The definitions of "communication" and "week" are removed. The level of itemization required for subsequent notices of a claim to a debtor is restored to current law, except that no itemization is necessary when the notice concerns a judgment against the debtor. Post-judgment interest, however, must be itemized if it is claimed. The types of communications that could be considered harassment are restored to current law, except that responding to a debtor does not count against the number of communications allowed per week. The limitation on the prohibition against a telephone call made or telegram sent where charges are incurred by the person called or the addressee is removed. Certain presumptions related to time zones apply when a licensee calls a "telephone" rather than a "cellular phone." A clarifying change is made by modifying "falsely threaten" to "deceptively threaten" and housekeeping changes are made.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Part of what this bill does is bring debt collection up to date with current technology by allowing a collection agency to contact a debtor through a cellular phone or wireless device. The prohibition on making telephone calls where the person called incurs charges was meant to prohibit collect calls, but prohibiting a collection agency from calling a debtor's cell phone in the first instance is not feasible. Many people only have cell phones. When calling a debtor's cell phone, collection agencies should not be penalized for calling a debtor's place of employment more than one time per week, because the collection agency cannot know if the person is at work or not. Contact initiated by a debtor is also deemed a communication, but the collection agency cannot control where the debtor calls from or from

what type of phone. It is important for collection agencies to be able to contact a debtor in the first instance and debtors have the ability to force collection agencies to cease communication. There could be a cost associated with calling a debtor's cell phone, but the debtors have a choice of whether to have a cell phone or not and collection agencies should not be barred from communication with debtors because of their choice to have a cell phone.

(Opposed) State law is preempted by federal law where there is a conflict, but state law can be more protective of consumers than federal law. In the last five or six years, there has been an incredible increase in debt collection harassment. The Fair Trade Commission has hundreds of thousands of complaints and the Attorney General's Office has a lot of complaints as well. The bill takes away the important state protection of itemization by not requiring itemization when the amount owed changes due to added interest. The debtor would not know exactly what they owe. Changing the definition of "communication" would increase harassment and it conflicts with federal law. The conflict with federal law would increase litigation. Perhaps the largest concern is the provision that would allow a collection agency to call a debtor's cell phone. The state offers protection from this by prohibiting communication where the person called is charged, but this would remove that safeguard. There have been cases across the country where debtors have received excessive cell phone calls and text messages that have hurt them. A collection agency should not have the right to call and harass a debtor without the debtor's permission. No state has been able to solve the cell phone issue, but the federal government is apparently attempting to address the issue.

Persons Testifying: (In support) Representative O'Brien, prime sponsor; and Kevin Underwood, Washington Collectors Association.

(Opposed) Bruce Neas, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: None.